

EXHIBIT F

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID GOLDSFINE,

Plaintiff,

v.

FEDEX FREIGHT, INC., a Washington State entity; "DOE(S) 1-100", employees of FEDEX FREIGHT, INC.; and CORPORATION(S) XYZ 1-100,

Defendants.

Case No. 2:18-cv-01164 MJP

***CONTINUED THIRD AMENDED
NOTICE OF VIDEOTAPED RULE
30(b)(6) DEPOSITION OF
DEFENDANT FEDEX FREIGHT,
INC.***

TO: FEDEX FREIGHT, INC., Defendant

AND TO: COUNSEL FOR DEFENDANT FEDEX FREIGHT, INC.

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), the videotaped deposition of Defendant FedEx Freight, Inc. will be taken upon Oral Examination on the subject matter and topics set forth in **Exhibit A** at the request of Plaintiff David Goldstine, in the above-entitled and numbered action before a court reporter:

DATE: Tuesday, April 16, 2019

TIME: 1:30 p.m. PST

LOCATION: AKW LAW, P.C.



6100 219th St SW, Suite 480
Mountlake Terrace, WA 98043

The deposition will be taken by court reporter, notary public, or other person duly authorized to administer oaths. The deposition shall be recorded on videotape. The deposition shall be subject to adjournment or continuance from time to time and is being taken for discovery, perpetuation, use at trial, and for all purposes permitted under the Rules of the Court.

DATED April 12, 2019.

AKW LAW, P.C.

/s/ Ada K. Wong

Ada K. Wong, WSBA #45936
Attorney for Plaintiff
6100 219th St. SW, Suite 480
Mountlake Terrace, WA 98043
Tel.: (206) 259-1259
Fax: (855) 925-9529
Email: ada@akw-law.com

1 **EXHIBIT A**

2 1. Defendant FedEx Freight, Inc.'s (hereinafter "DEFENDANT") practices,
3 guidelines, and protocols, formal or informal, written or otherwise, in effect at
4 DEFENDANT's Everett facility, located at 6414 Hardeson Road, Everett, Washington 98203¹
5 (where Plaintiff David Goldstine (hereinafter "PLAINTIFF") worked), from February 1, 2015
6 to present regarding and/or related to the procedure for employees to seek reasonable
7 accommodation for a disability.

8 2. All aspects of DEFENDANT's disability accommodation policies, procedures,
9 guidelines, or practices in effect from February 1, 2015 to present applicable to employees
10 holding positions similar to the position(s) held by PLAINTIFF while he was employed by
11 DEFENDANT, including:

12 a. Whether DEFENDANT had a policy or procedure for accommodating
13 employees with disabilities;
b. When said policy or procedure was created and the version in effect from
February 1, 2015 to present;
c. Who is/was responsible for ensuring the policy was implemented from
February 1, 2015 to present;
d. How do/did employees learn about DEFENDANT's accommodation
policy;
e. How do/did supervisors/managers learn about DEFENDANT's
accommodation policy; and
f. Whether DEFENDANT provided training on its accommodation policy or
procedures, and when.

14 3. All aspects of how DEFENDANT engages in the interactive process to
15 determine reasonable accommodations at the Everett facility from February 1, 2015 to present,
including:

16 a. All policies, procedures, and guidelines regarding engaging in the
interactive process;
b. How the interactive process is initiated/takes place/occurs/is conducted;
c. Who is in charge of engaging in the interactive process;
d. What information from the interactive process is maintained and/or
recorded;
e. Where the information from the interactive process is kept/maintained;
f. How DEFENDANT determines whether a reasonable accommodation can
be made, and who makes these determinations; and
g. What records are kept during the interactive process and after a reasonable
accommodation has been provided to DEFENDANT's employees.

21
22
23 ¹ Please note that the scope of the deposition is regarding the Everett facility where Plaintiff worked, unless
otherwise stated.

1 4. All aspects of how DEFENDANT engaged in the interactive process for
2 determining the reasonable accommodation(s) for PLAINTIFF, including:

- 3 a. Who engaged in said process;
- 4 b. All dates;
- 5 c. All reasonable accommodations DEFENDANT considered, when, and by
6 whom;
- 7 d. All reasonable accommodations DEFENDANT offered to PLAINTIFF,
8 when, by whom, and how;
- 9 e. How any records regarding the interactive process and/or reasonable
10 accommodation offered and/or provided to PLAINTIFF was/is
11 kept/maintained; and
- 12 f. Where any records regarding the interactive process and/or reasonable
13 accommodation offered and/or provided to PLAINTIFF was/is
14 kept/maintained.

15 5. DEFENDANT's practices, guidelines, and protocols, formal or informal,
16 written or otherwise, in effect at DEFENDANT's Everett facility from February 1, 2015 to
17 present, regarding and/or related to the procedure for employees to report discrimination on
18 the basis of a protected class, including disability discrimination and discrimination based on
19 perceived disability.

20 6. All aspects of DEFENDANT's anti-discrimination policy, including who
21 created the policy, when the policy was created, and the policy in effect from February 1, 2015
22 to present.

23 7. All aspects of DEFENDANT's anti-retaliation policy, including who created
24 the policy, when the policy was created, and the policy in effect from February 1, 2015 to
25 present.

26 8. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
27 regarding vehicle maintenance, repairs, and vehicle safety procedures in effect from February
28 1, 2015 to present.

29 9. Any training provided to PLAINTIFF and/or PLAINTIFF's
30 supervisors/managers regarding DEFENDANT's anti-discrimination and/or anti-retaliation
31 policy, if any, including when the training was provided, the dates of said trainings, who was
32 provided with the training and when, and the substance of said training.

33 10. PLAINTIFF's job duties, responsibilities, essential and non-essential functions
34 of his job as a Road Driver, as well as the job duties, responsibilities, essential and non-
35 essential functions of the job for those in a similar role or capacity as PLAINTIFF from
36 February 1, 2015 to present.

1 11. The chain of command/organizational structure, including the direct and
2 indirect reporting structure of the supervisors, managers, leads, employees, and other staff as
3 related to PLAINTIFF/PLAINTIFF's position(s) from February 1, 2015 to present.

4 12. The duties and responsibilities of PLAINTIFF's immediate and second-level
5 supervisors/managers from February 1, 2015 to present.

6 13. Any and all disabilities DEFENDANT knew PLAINTIFF had or that
7 DEFENDANT perceived that PLAINTIFF had during PLAINTIFF's period of employment
8 with DEFENDANT, including all details of said knowledge of or perception of disability.

9 14. ~~Any and all disability accommodations PLAINTIFF requested or that~~
10 DEFENDANT perceived that PLAINTIFF required during PLAINTIFF's period of
11 employment with DEFENDANT, including all details of said accommodation request(s).

12 15. Any and all accommodations DEFENDANT provided to PLAINTIFF for
13 disabilities during PLAINTIFF's period of employment with DEFENDANT, including all
14 details of said accommodation(s).

15 16. ~~Any interactive process that DEFENDANT engaged in for any disabilities of~~
16 PLAINTIFF that DEFENDANT knew of, or perceived to exist, including all details of said
17 process, dates, and names and contact information of those involved in said process.

18 17. How many employees DEFENDANT ordered to undergo multiple physical
19 examinations within one calendar year at the Everett facility in the last five (5) years, including
20 all names and contact information for said employees and/or past employees, duties and
21 responsibilities.

22 18. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
23 regarding health and safety in the workplace in effect from February 1, 2015 to present
24 applicable to individuals employed as Road Drivers and employees holding positions similar
25 to the position(s) held by PLAINTIFF while he was employed by DEFENDANT, including:

- 26 a. Whether DEFENDANT had such a policy or procedure;
- 27 b. When said policy or procedure was created and the version in effect from
28 February 1, 2015 to present;
- 29 c. Who is/was responsible for ensuring the policy was implemented from
30 February 1, 2015 to present;
- 31 d. How do/did employees learn about DEFENDANT's health and safety
32 policy;
- 33 e. How do/did supervisors/managers learn about DEFENDANT's health and
34 safety policy; and
- 35 f. Whether DEFENDANT provided training on its health and safety policy or
36 procedures, and when.

1 19. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
2 regarding medical examination and/or medical certification in effect from February 1, 2015 to
3 present applicable to individuals employed as Road Drivers and employees holding positions
4 similar to the position(s) held by PLAINTIFF while he was employed by DEFENDANT,
5 including:

- 6 a. Whether DEFENDANT had a policy or procedure for conducting medical
7 examinations and/or medical certification;
- 8 b. When said policy or procedure was created and the version in effect from
9 February 1, 2015 to present;
- 10 c. Who is/was responsible for ensuring the policy was implemented from
11 February 1, 2015 to present;
- 12 d. How do/did employees learn about DEFENDANT's medical examination
13 and/or medical certification policy;
- 14 e. How do/did supervisors/managers learn about DEFENDANT's medical
15 examination and/or medical certification policy; and
- 16 f. Whether DEFENDANT provided training on its medical examination
17 and/or medical certification policy or procedures, and when.

18 20. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
19 regarding certification/decertification/not certifying/not re-certifying drivers in effect from
20 February 1, 2015 to present applicable to individuals employed as Road Drivers and employees
21 holding positions similar to the position(s) held by PLAINTIFF while he was employed by
22 DEFENDANT, including:

- 23 a. Whether DEFENDANT had a policy or procedure for decertification/not
24 certifying/not re-certifying of Road Drivers or other employees with similar
25 job responsibilities;
- 26 b. When said policy or procedure was created and the version in effect from
27 February 1, 2015 to present;
- 28 c. Who is/was responsible for ensuring the policy was implemented from
29 February 1, 2015 to present;
- 30 d. How do/did employees learn about DEFENDANT's
31 certification/decertification/not certifying/not re-certifying policy;
- 32 e. How do/did supervisors/managers learn about DEFENDANT's
33 certification/decertification/not certifying/not re-certifying policy; and
- 34 f. Whether DEFENDANT provided training on its
35 certification/decertification/not certifying/not re-certifying policy or
36 procedures, and when.

37 21. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
38 regarding "park"/"parking"/"parked" Road Drivers (as used herein, the terms "park"
39 /"parking"/"parked" refer to the practice of prohibiting a Road Driver or other employee for
40 driving for DEFENDANT and/or relief from driving duty for DEFENDANT) in effect from
41 February 1, 2015 to present applicable to individuals employed as Road Drivers and employees
42 holding positions similar to the position(s) held by PLAINTIFF while he was employed by
43 DEFENDANT, including:

- 1 a. Whether DEFENDANT had a policy or procedure for "parking" Road
- 2 Drivers;
- 3 b. When said policy or procedure was created and the version in effect from
- 4 February 1, 2015 to present;
- 5 c. Who is/was responsible for ensuring the policy was implemented from
- 6 February 1, 2015 to present;
- 7 d. How do/did employees learn about DEFENDANT's "parking" policy;
- 8 e. How do/did supervisors/managers learn about DEFENDANT's "parking"
- 9 policy; and
- 10 f. Whether DEFENDANT provided training on its "parking" policy or
- 11 procedures, and when.

12 22. All aspects of DEFENDANT's policies, procedures, guidelines, or practices
13 regarding the relieving of duty of Road Drivers in effect from February 1, 2015 to present
14 applicable to individuals employed as Road Drivers and employees holding positions similar
15 to the position(s) held by PLAINTIFF while he was employed by DEFENDANT, including:

- 16 a. Whether DEFENDANT had a policy or procedure for the relieving of duty
- 17 of Road Drivers;
- 18 b. When said policy or procedure was created and the version in effect from
- 19 February 1, 2015 to present;
- 20 c. Who is/was responsible for ensuring the policy was implemented from
- 21 February 1, 2015 to present;
- 22 d. How do/did employees learn about DEFENDANT's relieving of duty
- 23 policy;
- 24 e. How do/did supervisors/managers learn about DEFENDANT's relieving of
- 25 duty policy;
- 26 f. Whether DEFENDANT provided training on its relieving of duty policy or
- 27 procedures, and when;
- 28 g. Whether DEFENDANT had a policy for relieving of duty of a Road Driver
- 29 for insufficient medical documentation; and
- 30 h. Details of the policy of relieving a Road Driver of duty until a statement
- 31 concerning a specific event is submitted.

32 23. All aspects of DEFENDANT's performance review policies, procedures,
33 guidelines, or practices in effect from February 1, 2015 to present applicable to employees
34 holding positions similar to the position(s) held by PLAINTIFF while he was employed by
35 DEFENDANT, including:

- 36 a. Whether DEFENDANT had a policy or procedure for conducting
- 37 performance reviews;
- 38 b. When said policy or procedure was created and the version in effect from
- 39 February 1, 2015 to present;
- 40 c. Who is/was responsible for ensuring the policy was implemented from
- 41 February 1, 2015 to present;
- 42 d. How do/did employees learn about DEFENDANT's performance review
- 43 policy;

- e. How do/did supervisors/managers learn about DEFENDANT's performance review policy; and
- f. Whether DEFENDANT provided training on its performance review policy or procedures, and when.

24. All aspects of DEFENDANT's disciplinary policies, procedures, guidelines, or practices in effect from February 1, 2015 to present applicable to employees holding positions similar to the position(s) held by PLAINTIFF while he was employed by DEFENDANT, including:

- a. Whether DEFENDANT had a policy or procedure for disciplining employees;
- b. When said policy or procedure was created and the version in effect from February 1, 2015 to present;
- c. Who is/was responsible for ensuring the policy was implemented from February 1, 2015 to present;
- d. How do/did employees learn about DEFENDANT's disciplinary policy;
- e. How do/did supervisors/managers learn about DEFENDANT's disciplinary policy; and
- f. Whether DEFENDANT provided training on its disciplinary policy or procedures, and when.

25. All aspects of DEFENDANT's termination policies, procedures, guidelines, or practices in effect from February 1, 2015 to present applicable to employees holding positions similar to the position(s) held by PLAINTIFF while he was employed by DEFENDANT, including:

- a. Whether DEFENDANT had a policy or procedure for terminating employees;
- b. When said policy or procedure was created and the version in effect from February 1, 2015 to present;
- c. Who is/was responsible for ensuring the policy was implemented from February 1, 2015 to present;
- d. How do/did employees learn about DEFENDANT's disciplinary policy;
- e. How do/did supervisors/managers learn about DEFENDANT's termination policy; and
- f. Whether DEFENDANT provided training on its termination policy or procedures, and when.

26. All aspects of DEFENDANT's employment regulations, guidelines, handbooks, employment manuals, procedures, or other similar materials in effect from February 1, 2015 to present applicable to employees holding positions similar to the position(s) held by PLAINTIFF while he was employed by DEFENDANT, and whether PLAINTIFF was provided a copy of said document, and when.

1 27. Any and all issues, problems, or inability of PLAINTIFF in undertaking his job
2 duties and responsibilities as a Road Driver during his period of employment with
3 DEFENDANT, including:

- 4 a. Whether DEFENDANT wrote up PLAINTIFF regarding any said issues, if
5 so, when and by whom;
- 6 b. Whether DEFENDANT ever spoke with PLAINTIFF regarding said issues, if so, when and by whom;
- 7 c. Whether DEFENDANT ever counseled PLAINTIFF, formally or informally regarding said issues, and if so, when and by whom;
- 8 d. Whether DEFENDANT ever otherwise disciplined PLAINTIFF, formally or informally regarding any said issues, and if so, when and by whom; and
- 9 e. Whether DEFENDANT relieved PLAINTIFF of duty because of said issues; and
- 10 f. Whether DEFENDANT perceived or believed any said issues were because of or related to a disability of PLAINTIFF's.

11 28. The facts and circumstances of PLAINTIFF's status regarding medical
12 examinations and/or medical certification(s) DEFENDANT required for PLAINTIFF to work
13 as a Road Driver in 2017, including:

- 14 a. The specific medical examinations and/or medical certifications that DEFENDANT required PLAINTIFF to undergo in 2017;
- 15 b. The status of PLAINTIFF's medical examinations and/or medical certifications in 2017, including all changes in status, when each change in status occurred, who made the decision to change PLAINTIFF's status, and why the decision to change PLAINTIFF's status was made;
- 16 c. The dates in 2017 on which PLAINTIFF had valid medical examinations and/or medical certification(s), and the dates in 2017 on which he was decertified; and
- 17 d. The name and contact information for the individual(s) who made each decision to change PLAINTIFF's status regarding medical examinations and/or medical certification(s).

18 29. The facts and circumstances, in detail, regarding any of the following action(s)
19 DEFENDANT took with respect to PLAINTIFF in 2017:

- 20 a. Certification/decertification/not certifying/not re-certifying PLAINTIFF;
- 21 b. PLAINTIFF being "park"/"parking"/"parked"; and
- 22 c. Relieving PLAINTIFF of duty.

23 30. The facts and circumstances, in detail, regarding DEFENDANT's allegation
24 that PLAINTIFF did not fully disclose his complete health history on his medical examination
25 in April 2017.

26 31. The facts and circumstances, in detail, regarding DEFENDANT's allegation
27 that a doctor failed to complete the Medical Examiner Determination regarding PLAINTIFF
28 in June 2017.

1 DEFENDANT received such information, the substance of said information, and any actions
2 taken or responses by DEFENDANT as a result of said information.

3 39. Any and all information and/or correspondence provided to DEFENDANT by
4 PLAINTIFF, third parties, and/or others regarding and/or related to PLAINTIFF's
5 recommended work restrictions, work modifications, monitoring requirements, and/or
6 accommodations, including all dates DEFENDANT received such information, the names and
7 contact information from whom DEFENDANT received such information, the substance of
8 said information, and any actions taken or responses by DEFENDANT as a result of said
9 information.

10 40. Any and all information and/or correspondence provided to DEFENDANT by
11 PLAINTIFF, third parties, and/or others regarding and/or related to PLAINTIFF's inability or
12 limitations on his ability to work, including all dates DEFENDANT received such information,
13 the names and contact information from whom DEFENDANT received such information, the
14 substance of said information, and any actions taken or responses by DEFENDANT as a result
15 of said information.

16 41. DEFENDANT's policies, procedures, and protocol for the retention and
17 keeping of employees' personnel and employment files and/or other employment-related
18 records and files in effect from February 1, 2015 to present at the Everett facility.

19 42. All agreements, correspondence, and/or documents, written or otherwise,
20 between DEFENDANT and PLAINTIFF regarding:

- 21 a. PLAINTIFF's duties and responsibilities;
- 22 b. PLAINTIFF's rate(s) of pay;
- 23 c. PLAINTIFF's dates of work;
- d. PLAINTIFF's position title(s);
- e. PLAINTIFF's scope of work;
- f. PLAINTIFF's hours of work;
- g. PLAINTIFF's prerequisites for driving;
- h. All person(s) PLAINTIFF was to report to;
- i. All person(s) who maintain supervisory, direction, or control over
PLAINTIFF and/or his work; and
- j. DEFENDANT's protocols, guidelines, or policies for PLAINTIFF to
follow regarding performing work for DEFENDANT.

19 43. Any and all investigations where PLAINTIFF was the subject of the
20 investigation, including:

- 21 a. The facts of the complaint or communication that was made and the manner
in which it was made;
- 22 b. Whether an investigation was conducted, and if so, the nature of the
investigation that was conducted, including who performed the
investigation, who was interviewed as a part of the investigation, and what
determinations were made; and when said investigation was conducted; and

c. The results of any investigation.

44. Agents, personnel, staff, contractors, and/or employees at DEFENDANT's Everett facility who have or had whole or partial duties similar to PLAINTIFF for the last five (5) years, and their duties and responsibilities, as well as:

- a. Who these individuals reported to during those times;
- b. All person(s) who maintain supervisory, direction, or control over these individuals and/or their work; and
- c. DEFENDANT's protocols, guidelines, or policies for these individuals to follow regarding performing work for DEFENDANT.

45. All facts related to DEFENDANT's affirmative defenses that:

- a. PLAINTIFF's claims are barred, in whole or in part, for failure to state a claim for which relief may be granted;
- b. PLAINTIFF's claims are barred, in whole or in part, by the applicable statute of limitations and/or contractual limitations period;
- c. Some or all of PLAINTIFF's claims are barred because they are outside the scope of PLAINTIFF's administrative charge;
- d. Some or all of PLAINTIFF's claims are barred because of the insufficient and/or untimely filing and/or processing of his charge of discrimination with the Washington State Human Rights Commission;
- e. DEFENDANT has adopted anti-discrimination and anti-retaliation policies; has made good faith efforts to educate its employees about these policies and statutory prohibitions; has made good faith efforts to enforce these policies; and has made good faith efforts to investigate and remedy any complaints PLAINTIFF has raised;
- f. DEFENDANT did not act with malice or reckless indifference to PLAINTIFF's protected rights;
- g. PLAINTIFF is not entitled to punitive damages;
- h. Without admitting any of the allegations contained in the Complaint, FedEx avers that to the extent the Complaint seeks punitive damages, it violates FedEx's right to procedural due process under the Fourteenth Amendment of the United States Constitution and/or under the Constitution of the State of Washington; it violates FedEx's right to protection from "excessive fines" as provided in the Eighth Amendment to the United States Constitution and/or pertinent provisions of the Constitution of the State of Washington; and it violates FedEx's right to substantive due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and/or the Constitution of the State of Washington; and therefore, fails to state a cause of action supporting punitive damages;
- i. PLAINTIFF has failed to participate in the interactive process; and
- j. FedEx Freight reserves the right to assert addition or other defenses as discovery progresses.

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On April 12, 2019, I caused a copy of the foregoing to be served on the parties listed below in the manner specified below:

<p>Medora A. Marisseau KARR TUTTLE CAMPBELL 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 E-mail: mmarisseau@karrtuttle.com E-mail: kmejia@karrtuttle.com</p> <p><i>Attorneys for Defendant FedEx Freight, Inc.</i></p>	<input type="checkbox"/> VIA FACSIMILE
	<input checked="" type="checkbox"/> VIA FIRST CLASS U.S. MAIL
	<input type="checkbox"/> VIA MESSENGER/HAND DELIVERY
	<input checked="" type="checkbox"/> VIA E-MAIL/E-FILE <i>Per 11/30/18 Stipulation Regarding Electronic Service</i>
<p>Donald H. Snook FEDEX FREIGHT, INC. 1715 Aaron Brenner Drive, Suite 600 Memphis, TN 38120 E-mail: donald.snook@fedex.com E-mail: deborah.hill@fedex.com</p> <p><i>Attorneys for Defendant FedEx Freight, Inc.</i></p>	<input type="checkbox"/> VIA FACSIMILE
	<input type="checkbox"/> VIA FIRST CLASS U.S. MAIL
	<input checked="" type="checkbox"/> VIA MESSENGER/HAND DELIVERY
	<input checked="" type="checkbox"/> VIA E-MAIL/E-FILE <i>Per 11/30/18 Stipulation Regarding Electronic Service</i>

DATED this 12th day of April, 2019.

/s/ Kaila A. Eckert